

# COMMITTEE REPORT

## MADAM PRESIDENT:

**The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 612, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:**

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 22-4-8-3.5 IS ADDED TO THE INDIANA
- 4       CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 5       [EFFECTIVE JULY 1, 2005]: **Sec. 3.5. As used in this article,**
- 6       **"employment" does not include an owner-operator that provides**
- 7       **a motor vehicle and the services of a driver to a motor carrier**
- 8       **under a written contract that is subject to IC 8-2.1-24-22, 45**
- 9       **IAC 16-1-13, or 49 CFR 376."**
- 10       Page 3, line 1, after "shall" delete ",".
- 11       Page 3, line 1, strike "upon application and agreement by and".
- 12       Page 3, line 2, strike "between the disposing and acquiring
- 13       employers,".
- 14       Page 3, line 6, strike "However, the" and insert "**An**".
- 15       Page 3, line 6, strike "and".
- 16       Page 3, line 7, strike "agreement".
- 17       Page 3, line 15, after "account" delete ",".
- 18       Page 3, line 15, strike "if transferred,".
- 19       Page 3, line 16, strike "rules prescribed by ths board." and insert
- 20       "**IC 22-4-11.5**".
- 21       Page 6, delete lines 17 through 20, begin a new paragraph and insert:

1       **"Sec. 6. As used in this chapter, "knowingly" has the meaning**  
 2       **set forth in IC 35-41-2-2(b)."**

3       Page 6, line 23, delete "solely to obtain a lower" and insert ";".

4       Page 6, line 24, delete "contribution rate;".

5       Page 6, run in lines 23 through 24.

6       Page 6, between lines 33 and 34, begin a new paragraph and insert:

7       **"(c) The experience account balance and the payroll of the**  
 8       **predecessor employer on the date of the transfer, and the benefits**  
 9       **chargeable to the predecessor employer's original experience**  
 10       **account after the date of the transfer, must be divided between the**  
 11       **predecessor employer and the successor employer in accordance**  
 12       **with rules adopted by the department under IC 4-22-2.**

13       **(d) Any written determination made by the department is**  
 14       **conclusive and binding on both the predecessor employer and the**  
 15       **successor employer unless one (1) or both employers file with the**  
 16       **department a written protest setting forth the grounds and reasons**  
 17       **for the protest. A protest under this section must be filed not later**  
 18       **than ten (10) days after the date the department mails the initial**  
 19       **determination to the employing units. The protest shall be heard**  
 20       **and determined under this section and IC 22-4-32-1 through**  
 21       **IC 22-4-32-15. Both the predecessor employer and successor**  
 22       **employer shall be parties to the hearing before the administrative**  
 23       **law judge and are entitled to receive copies of all pleadings and the**  
 24       **decision."**

25       Page 6, line 34, delete "an administrative law judge" and insert **"the**  
 26       **department"**.

27       Page 7, line 2, delete "new employer".

28       Page 7, line 3, delete "IC 22-4-10." and insert **"this chapter."**

29       Page 7, line 7, delete "administrative law judge" and insert  
 30       **"commissioner"**.

31       Page 7, between lines 17 and 18, begin a new paragraph and insert:

32       **"(c) If the commissioner makes an initial determination that a**  
 33       **violation of this chapter has occurred, the commissioner shall**  
 34       **promptly refer the matter to an administrative law judge for a**  
 35       **hearing and decision under this article."**

36       Page 7, line 24, delete "for pecuniary gain".

37       Page 7, delete line 32.

38       Page 7, line 33, delete "section." and insert **"chapter."**

1 Page 8, delete lines 18 through 24, begin a new paragraph and insert:

2 **"Sec. 11. (a) The commissioner shall establish procedures to**  
3 **identify the transfer or acquisition of a business for purposes of this**  
4 **chapter.**

5 **(b) The interpretation and application of this chapter must meet**  
6 **the minimum requirements contained in any guidance or**  
7 **regulations issued by the United States Department of Labor.**

8 SECTION 7. [EFFECTIVE JULY 1, 2005] (a) 646 IAC 3-4-10 is  
9 void after December 31, 2005. The publisher of the Indiana  
10 Administrative Code and Indiana Register shall remove this section  
11 from the Indiana Administrative Code after that date.

12 **(b) Before January 1, 2006, the department of workforce**  
13 **development shall adopt rules for transfers of a portion of a trade**  
14 **or business under IC 22-4-11.5-7, as added by this act, including**  
15 **the division between the predecessor employer and the successor**  
16 **employer of:**

- 17 (1) the experience account balance of the predecessor  
18 employer;  
19 (2) the payroll of the predecessor employer; and  
20 (3) the benefits chargeable to the predecessor employer's

- 1           **original experience account after the date of the transfer.**
- 2           **(c) This SECTION expires January 1, 2006."**
- 3           Renumber all SECTIONS consecutively.  
              (Reference is to SB 612 as introduced.)

**and when so amended that said bill do pass.**

Committee Vote: Yeas 7, Nays 3.

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**Harrison**

**Chairperson**